

### REMARKS

The Office Communication mailed November 4, 2002, has been received and reviewed. Claims 1-28 are currently pending in the application and are subject to the Restriction and Election of Species Requirements. Claim 24 has been amended and rewritten into independent form as set forth herein. Claims 12-23 and 26 have been cancelled. All amendments and cancellations are made without prejudice or disclaimer. Reconsideration is respectfully requested.

#### Restriction Requirement

— Responsive to the Restriction Requirement, applicants elect, without traverse, the claims of Group I (*i.e.*, claims 1-11, 24-25 and 27-28). Applicants accordingly cancel the non-elected claims without prejudice.

#### Species Election

The application is also subject to Election of Species Requirements.

Responsive to the election of species of at least one deletion, applicants elect the at least one deletion in the E3 region where a nucleic acid of interest is inserted. Applicants note that claim 2 is generic to the plurality of disclosed patentably distinct species and upon allowance of the generic claim, the claims to each of the species should be allowable. (*See*, 37 C.F.R. § 1.141).

Responsive to the election of a fiber protein, applicants elect the fiber protein derived from adenovirus type 35. As claim 4 is generic to the plurality of fiber protein species, upon allowance of the generic claim, the claims to each of the species should be allowable. (*See, Id.*).

Responsive to the election of the nucleic acid of interest genus, applicants provisionally elect a nucleic acid of interest that inhibits cartilage disease progression, with traverse. This provisional election is made with traverse since the nucleic acid of interest is not a limiting feature of the invention, and the examination of any nucleic acid of interest should not be an undue burden on the Office and further restriction should not be required.

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As discussed with the examiner by telephone on December 6, 2002, the claims are directed to a method of delivering a nucleic acid of interest to human chondrocytes using a recombinant adenovirus with a tropism for primary human chondrocytes, and the applicants have elected a recombinant adenovirus with a deletion in the E3 region in adenovirus type 35. Accordingly, further restriction to a species of a nucleic acid of interest is not proper. The nucleic acid of interest is inserted in the deletion of the E3 region (*See, Specification*, paragraph [0026]) and, therefore, the nucleic acid of interest is related to the disclosed recombinant adenovirus.

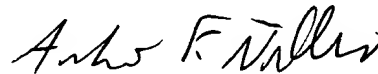
Further, it should not be an undue burden on the Office to search and examine the claims including the nucleic acid of interest since the limitation is related to the claims of Group I. As claims 1 and 24 are generic, applicants note that upon allowance of the generic claim, claims to each of the asserted species should be allowable. (*See*, 37 C.F.R. § 1.141).

Reconsideration and substantive examination of the application is requested.

### CONCLUSION

If questions exist after consideration of the foregoing, the Office is kindly requested to contact the applicants' representative at the address of telephone number given below.

Respectfully submitted,



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**MARKED UP VERSION OF CLAIMS SHOWING CHANGES MADE**

24. (Amended) Chondrocytes provided with an additional nucleic acid encoding at least one amino acid sequence that inhibits cartilage disease progression and/or at least one amino acid sequence that counteracts the loss of cartilage, said additional nucleic acid being provided by a gene delivery vehicle [of claim 12] comprising a recombinant adenovirus having a tropism for chondrocytes.

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